

Chapter 35 have been met (Appendix M to this part), along with the customer's authorization, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

APPENDIX C TO PART 275—OBTAINING ACCESS BY ADMINISTRATIVE OR JUDICIAL SUBPOENA OR BY FORMAL WRITTEN REQUEST

A. Access to information contained in financial records from a financial institution may be obtained by Government authority when the nature of the records is reasonably described and the records are acquired by:

1. *Administrative Summons or Subpoena.* a. Within the Department of Defense, the Inspector General, DoD, has the authority under the Inspector General Act to issue administrative subpoenas for access to financial records. No other DoD Component official may issue summons or subpoenas for access to these records.

b. The Inspector General, DoD shall issue administrative subpoenas for access to financial records in accordance with established procedures but subject to the procedural requirements of this appendix.

2. *Judicial Subpoena.*

3. *Formal Written Request.*

a. Formal requests may only be used if an administrative summons or subpoena is not reasonably available to obtain the financial records.

b. A formal written request shall be in a format set forth in Appendix K to this part and shall:

1. State that the request is issued under 12 U.S.C. Chapter 35 and the DoD Component's implementation of this part.

2. Describe the specific records to be examined.

3. State that access is sought in connection with a legitimate law enforcement inquiry.

4. Describe the nature of the inquiry.

5. Be signed by the head of the law enforcement office or a designee.

B. A copy of the administrative or judicial subpoena or formal request, along with a notice specifying the nature of the law enforcement inquiry, shall be served on the person or mailed to the person's last known mailing address on or before the subpoena is served on the financial institution unless a delay of notice has been obtained under Appendix H of this part.

C. The notice to the customer shall be in a format similar to Appendix L to this part and shall be personally served at least 10 days or mailed at least 14 days prior to the date on which access is sought.

D. The customer shall have 10 days to challenge a notice request when personal service is made and 14 days when service is by mail.

E. No access to financial records shall be attempted before the expiration of the perti-

nent time period while awaiting receipt of a potential customer challenge, or prior to the adjudication of any challenge made.

F. The official who signs the customer notice shall be designated to receive any challenge from the customer.

G. When a customer fails to file a challenge to access to financial records within the above pertinent time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. Chapter 35. No access to any financial records shall be made before such certification (Appendix M to this part) is provided the financial institution.

APPENDIX D TO PART 275—OBTAINING ACCESS BY SEARCH WARRANT

A. A Government authority may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure.

B. Unless a delay of notice has been obtained under provisions of Appendix H to this part, the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [DoD office or activity] on [date] for the following purpose: [state purpose]. You may have rights under the Right to Financial Privacy Act of 1978."

C. In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search authorizations signed by installation commanders, military judges, or magistrates shall not be used to gain access to financial records.

APPENDIX E TO PART 275—OBTAINING ACCESS FOR FOREIGN INTELLIGENCE, FOREIGN COUNTERINTELLIGENCE, AND INTERNATIONAL TERRORIST ACTIVITIES OR INVESTIGATIONS

A. Financial records may be obtained from a financial institution (as identified at §275.3) by an intelligence organization, as identified in DoD Directive 5240.1¹, authorized to conduct intelligence activities, to include investigation or analyses related to international terrorism, pursuant to DoD Directive 5240.1 and Executive Order 12333.

¹Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

B. The provisions of this part do not apply to the production and disclosure of financial records when requests are submitted by intelligence organizations except as may be required by this Appendix.

C. When a request for financial records is made under paragraph A. of this appendix, a Component official designated by the Secretary of Defense, the Secretary of a Military Department, or the Head of the DoD Component authorized to conduct foreign intelligence or foreign counterintelligence activities shall certify to the financial institution that the requesting Component has complied with the provisions of U.S.C. chapter 35. Such certification in a format similar to Appendix M to this part shall be made before obtaining any records.

D. An intelligence organization requesting financial records under paragraph A. of this appendix, may notify the financial institution from which records are sought 12 U.S.C. 3414(3) prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in

E. An intelligence organization requesting financial records under paragraph A. of this appendix, shall maintain an annual tabulation of the occasions in which this access procedure was used.

APPENDIX F TO PART 275—OBTAINING EMERGENCY ACCESS

A. Except as provided in paragraphs B. and C. of this appendix, nothing in this part shall apply to a request for financial records from a financial institution when a determination is made that a delay in obtaining access to such records would create an imminent danger of:

1. Physical injury to any person.
2. Serious property damage.
3. Flight to avoid prosecution.

B. When access is made to financial records under paragraph A of this appendix, a Component official designated by the Secretary of Defense or the Secretary of a Military Department shall:

1. Certify in writing, in a format set forth in Appendix M to this part, to the financial institution that the Component has complied with the provisions of 12 U.S.C. chapter 35, as a prerequisite to obtaining access.

2. Submit for filing with the appropriate court a signed sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

C. When access to financial records are obtained under paragraph A. of this appendix, a copy of the request, along with the following notice, shall be served on the person or

mailed to the person's last known mailing address as soon as practicable after the records have been obtained unless a delay of notice has been obtained under appendix H of this part.

"Records concerning your transactions held by the financial institution named in the attached request were obtained by [Agency or Department] under the Right to Financial Privacy Act of 1978 on [date] for the following purpose: [state with reasonable specificity the nature of the law enforcement inquiry]. Emergency access to such records was obtained on the grounds that [state grounds]."

Mailings under this paragraph shall be by certified or registered mail.

APPENDIX G TO PART 275—RELEASING INFORMATION OBTAINED FROM FINANCIAL INSTITUTIONS

A. Financial records obtained under 12 U.S.C. chapter 35 shall be marked: "This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, and may not be transferred to another Federal Agency or Department without prior compliance with the transferring requirements of 12 U.S.C. 3412."

B. Financial records obtained under this part shall not be transferred to another Agency or Department outside the Department of Defense unless the head of the transferring law enforcement office, personnel security element, or intelligence organization, or designee, certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity (to include investigation or analyses related to international terrorism) within the jurisdiction of the receiving Agency or Department. Such certificates shall be maintained with the DoD Component along with a copy of the released records.

C. Subject to paragraph D. of this appendix, unless a delay of customer notice has been obtained under Appendix H of this part, the law enforcement office or personnel security element shall, within 14 days, personally serve or mail to the customer, at his or her last known address, a copy of the certificate required by paragraph B., along with the following notice:

"Copies of or information contained in your financial records lawfully in possession of [name of Component] have been furnished to [name of Agency or Department] pursuant to the Right to Financial Privacy Act of 1978 for the following purposes: [state the nature of the law enforcement inquiry with reasonable specificity]. If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."